matter entered a state of suspended animation until the judge ruled one way or the other upon the application. True it is that the application did not act as an automatic stay, but if the judge had failed to make his ruling by the time the date fixed for sale had arrived on December 13, 1976, an application to stay the sale could not have been other than successful.

Their Lordships are of the view, therefore, that the Federal Court came to the right conclusion in this matter, and that the only way in which it is possible with fairness to reconcile the provisions of rule 13(a) on the one hand and of Order 54 rule 22A of the Rules of the Supreme Court on the other is to hold that in the case of an order made in chambers in which an application under Order 54 rule 22A has been lodged within the time allowed, the time for appealing under rule 13(a) runs from the date when the judge's decision not to require further argument is communicated to the applicant and not from the date of his original order.

Their Lordships would wish to add this comment. Even if they had not been in agreement with the reasoning and conclusions of the Federal Court (as in fact they are), they would have felt reluctant to differ from that court on a matter which is eminently procedural and eminently a matter in this case to be left to the courts of Malaysia to decide.

Their Lordships accordingly advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Stephenson Harwood; Philip Conway Thomas & Co.*

A SINGAPORE REPORTS

RE AMOS WILLIAM DAWE; AMOS WILLIAM DAWE v. WAYFOONG MORTGAGE AND FINANCE (SINGAPORE) LTD.

[C.A. (Chua, Kulasekaram & D'Cotta JJ.) July 20, 1979]
[Singapore — Civil Appeal No. 37 of 1979]

Bankruptcy — Receiving and Adjudication orders — Appeal against — Whether appellant "debtor" within s. 3(3), Bankruptcy Act — Questions subjective to appellant and necessitating his physical presence for cross-examination — Bankruptcy Act (Cap. 18), ss. 3(3) & 105(1).

In this case, a bankruptcy petition was presented on July 10, 1978 by the respondents against the appellant in respect of the non-payment of a final judgment amounting to $1,077,919.33 dated November 22, 1977, obtained by the respondents against the appellant in the High Court, Singapore. On October 27, 1978, Receiving and Adjudication orders were made against the appellant.

In the petition it was stated that the appellant "has for the greater part of six months next preceding the presentation of this petition resided at No. 15, Barker Road, Singapore, within the jurisdiction of this court". On February 5, 1979, the appellant filed a motion for an order that the Receiving and Adjudication orders be rescinded and annulled and that the petition of the respondents be set aside.

In the court below, counsel for the appellant contended the appellant was not domiciled in Singapore, that he had not, within a year before the date of the presentation of the petition, ordinarily resided in or had a dwelling-house or place of business in Singapore. The learned Chief Justice held that he was not prepared to accept the appellant's affidavits and required the appellant's presence in court for cross-examination. The appellant's then counsel said that she would not be able to produce the appellant and that if the appellant did come to Singapore he would be arrested. Thereupon the learned Chief Justice dismissed the motion with costs. The appellant appealed.

Held, dismissing the appeal: the questions which had to be decided in this case were questions subjective to the appellant and which required his physical presence in Singapore for cross-examination in court. There was therefore no reason to interfere with the decision of the learned Chief Justice.

Case referred to:-

(1) *In re A Debtor* [1978] 1 W.L.R. 1512, 1516.

CIVIL APPEAL.

H.E. Cashin (*Dr. Myint Soe* with him) for the appellant.

Tan Bok Hoay for the respondents.

Mohamed Harith Kassim (Assistant Official Assignee) for the Official Assignee.

Cur. Adv. Vult.

Chua J. (delivering judgment of the Court): On July 10, 1978, a bankruptcy petition was presented by the respondents against the appellant in respect of the non-payment of a final judgment amounting to $1,077,919.33 dated November 22, 1977, obtained by the respondents against the appellant in the High Court, Singapore. Receiving and Adjudication orders were made against the appellant on October 27, 1978. In the petition it was stated that the appellant "has for the greater part of six months next preceding the presentation of this petition resided at No. 15, Barker Road, Singapore, within the jurisdiction of this court." The petition was signed and presented by Mr. Keng

Ban Heng, the Managing Director of the respondents, who was duly authorised to sign and present the petition on behalf of the respondents. The petition was verified by the affidavit of Mr. Keng Ban Heng.

On February 5, 1979, the appellant filed a motion for an order that the Receiving and Adjudication orders be rescinded and annulled and that the petition of the respondents be set aside.

The motion was heard by the learned Chief Justice on March 16, 1979, who dismissed the motion with costs.

The appellant now appeals.

In support of his motion the appellant filed two affidavits. The appellant's evidence in his affidavits is this.

He began to reside at No. 15 Barker Road, Singapore, with his family on or about July 15, 1971, and continued to reside thereat until November 5, 1975. During this time he was a businessman and was involved in running the Mosbert Group of Companies and was a director in many companies of the said group. On November 5, 1975, he left Singapore in order to make an international business trip which included visits to Thailand, Hong Kong and the United Kingdom. Pursuant to this trip he entered Thailand on November 5, 1975. He travelled on his Singapore passport. After visiting Bangkok, Hong Kong and the United Kingdom he returned to Bangkok, on December 12, 1975, and took up residence in Thailand as from that date. He decided to take up residence in Thailand as a result of information which he had received from various reliable sources in Singapore from which he drew the conclusion that he would be apprehended if he returned to Singapore. He has never returned to Singapore since he left on November 5, 1975.

He resided in Bangkok from December 12, 1975, to July 21, 1976, during which period he made one short trip to Taiwan and another short trip to India. In March 1976, he applied for and was granted a certificate of residence from the Thai Government in about April 1976. His wife also resided with him in Bangkok from June 1976, so that they could set up a house together in Bangkok.

In July 1976, he decided to cease to be a resident of Thailand and decided to take up a new residence in Taiwan. He entered Taiwan on July 22, 1976, using his Singapore passport. Subsequently his wife and children joined him in Taipei, Taiwan, in order to set up a new home thereat.

Within a few days of arrival in Taiwan, he applied for and was granted a passport of Taiwan on August 16, 1976. His Taiwan passport was issued to him in his Chinese name "Law Sheng Moh".

Upon the issuance of the Taiwan passport he was given an identity card in his Chinese name which was only issued to citizens of Taiwan. In taking out Taiwanese citizenship and taking up residence in Taiwan he has given up his Singapore citizenship and he is no longer domiciled in Singapore.

As from August 16, 1976, he has not at any time travelled on his Singapore passport but has travelled solely on his Taiwan passport.

He lived in Taiwan until August 28, 1978, when he went to the United States of America in order to settle some of his business affairs in California. He was remaining for the time being in the U.S.A. in order to settle his affairs. (His affidavits gave his address as c/o Messrs. Breen & Parks, San Francisco).

Pursuant to his change of residence from Singapore to Thailand his wife arranged in April 1976, for No. 15 Barker Road, Singapore, to be let for a fixed term of two years as from June 1, 1976, to May 31, 1978, to Messrs. C. Itoh & Co. Ltd. The tenancy agreement was entered into by Messrs. Sunshine Securities Pte. Ltd. which held the title to No. 15 Barker Road "as a matter of convenience". At the expiry of the tenancy on May 31, 1978, No. 15 Barker Road has been vacant as far as he knew. In about the first week of October 1978, No. 15 Barker Road was sold. He had not resided in any other residence in Singapore since the date he began to reside there on July 15, 1971.

It is first submitted by Mr. Cashin, counsel for the appellant, that on the facts that have been deposed to by the appellant in his affidavits, the affidavit of Mr. Keng Ban Heng verifying the petition was untrue. Mr. Cashin says that Mr. Keng Ban Heng knew perfectly well at the time he swore his affidavit on June 24, 1978, that the appellant had not "for the greater part of six months next preceding the presentation of the petition resided at No. 15 Barker Road, Singapore, within the jurisdiction of this court." Mr. Cashin says that it was well-known at that time that the appellant was not residing at No. 15 Barker Road and if Mr. Keng Ban Heng had made inquiries he would have found that that was so. It is submitted that consequently the appellant was not a "debtor" within the meaning of section 3(3) of the Bankruptcy Act and the Receiving and Adjudication orders ought not to have been made.

We are unable to accept this submission.

The bankruptcy notice and the bankruptcy petition were served on the appellant by substituted service. Notices were published in the *Straits Times* on May 16 and October 7, 1978, respectively.

The statement of Mr. Keng Ban Heng in the bankruptcy petition in relation to the residence of the appellant was made to the best of his knowledge, information and belief.

The appellant was well aware of the bankruptcy proceeding taken by the respondents against him. Early in June 1978, he was aware of the bankruptcy notice that had been issued against him. He took no steps then or at the hearing of the petition to challenge the jurisdiction of this court. The Receiving and Adjudication orders were rightly made against the appellant.

It was on February 5, 1979, that the appellant filed the present motion challenging the jurisdiction of this court.

The motion of the appellant was made under sec-

tion 105(1) of the Bankruptcy Act (Cap. 18) which provides:

"105-(1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt... the court may annul the adjudication."

It is clear that under section 105(1) a bankruptcy may be annulled in the discretion of the court where the debtor ought not to have been adjudged bankrupt. It is for the debtor to satisfy the court that he ought not to have been adjudged bankrupt.

Mr. Cashin submits that on the facts before the learned Chief Justice the appellant had satisfied the court that he was not a "debtor" within the meaning of section 3(3) of the Bankruptcy Act.

Mr. Cashin submits that the appellant has satisfied the court that he was not domiciled in Singapore, that he has not, within a year before the date of the presentation of the petition, ordinarily resided in or had a dwelling-house or place of business in Singapore, or carried on business in Singapore personally or by an agent within Singapore. Now, these are questions, as Buckley L.J. said in *In re A Debtor*,[1] the investigation of which must involve consideration of the appellant's state of mind at the relevant time; they are matters which give rise to subjective questions on the appellant's state of mind.

The appellant, as he said, was involved in running the Mosbert Group of Companies and his interests are in Singapore. He had a dwelling-house here within one year before the date of the presentation of the petition.

The points raised by the appellant in his affidavits were raised before the learned Chief Justice and the learned Chief Justice was not prepared to accept the appellant's affidavits and the learned Chief Justice said that the best thing was for the appellant to appear in Singapore and be prepared to submit to cross-examination on the facts he deposed to in his affidavits and the learned Chief Justice was prepared to adjourn the hearing. The appellant's counsel, however, said that she would not be able to produce the appellant and that if the appellant did come to Singapore he would be arrested. Thereupon the learned Chief Justice dismissed the motion with costs.

As we have said the questions which have to be decided in this case are questions subjective to the appellant — questions of his frame of mind, his intention at various dates in relation to his residence, domicile and so forth. Those are matters in respect of which it seems to us that the physical presence of the appellant in Singapore to be cross-examined before the court is very highly desirable.

It seems to us that we should not interfere with the decision of the learned Chief Justice and it follows that this appeal must fail.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Donaldson & Burkinshaw.*

MALAYSIA DAIRY INDUSTRIES PTE. LTD. & ANOR. v. YAKULT (SINGAPORE) PTE. LTD.

[O.C.J. (Chua J.) August 14, 1979]
[Singapore — Suit No. 1159 of 1979]

Industrial Designs — Registered Design — Cultured milk — Claim to exclusive shape of bottle — Injunction to restrain defendants from selling cultured milk drinks in bottles so got up as to be calculated to lead to defendants' product being confused with plaintiffs' product — No distinctive appearance of bottle — Claim dismissed.

Trade Description — "The original LB-cultured milk drink" — Claim to exclusive right to letters "LB".

Practice and Procedure — Interlocutory injunction — Court must be satisfied claim not frivolous or vexatious before granting injunction.

The first plaintiff *(MDI)* in this case commenced business in 1964 with the production of sweetened condensed milk. The second plaintiff *(MM)* was incorporated in Malaysia in 1969, and was a subsidiary of *MDI*. In 1977 *MM* commenced commercial production of a lactic acid drink with a milk base which was sold in 125 millilitre bottles. The bottle design was registered as U.K. Registered Design No. 977999 as of November 19, 1976. The bottle, made of plastic, bore the words "VITAGEN" and "CULTURED MILK DRINK" with a description of the flavours, on the upper outwardly protruding ring of the bottle and the word "VITAGEN" enclosed in a lozenge shape. A statement as to the contents and the name of the manufacturers *(MM)* and the name of the distributor in Singapore *(MDI)* were on the lower outwardly protruding ring of the bottle.

Yakult Japan a leading manufacturer of a lactic acid drink known as "YAKULT" in Japan, registered the design of their bottle at the U.K. Design Registry as Registration Design No. 979895 as of May 4, 1977.

In May 1978 Yakult Japan instituted proceedings in London to remove the name of *MM* as proprietor of Registered Design No. 977999 and substituting therefore their name. These proceedings were contested by *MM*.

The defendant company was a joint venture of Yakult Japan and Cerebos (Singapore) Pte. Ltd. The defendant company was incorporated in Singapore on August 1, 1978. On February 15, 1979 Yakult Singapore wrote to the plaintiffs indicating that they intended to sell their lactic acid drink in Singapore using the Yakult bottle. The plaintiffs then wrote on March 21, 1978, asking the defendants for an immediate written undertaking not to sell the lactic acid drinks in bottles which are identical to the Vitagen bottles. No such written undertaking was forthcoming. Instead, the defendants and Yakult Japan issued a writ on March 30, 1979 against the plaintiffs claiming "a declaration that unless and until the courts of the United Kingdom shall finally determine that the second defendant *(MM)* is the true and lawful proprietor and beneficial owner of the said Registered Design No. 977999 then each of the plaintiffs is entitled to manufacture and sell yogurt in Singapore in the Yakult Singapore containers".

The plaintiffs sought to restrain the defendants from infringing U.K. Registered Design Number 977999. They applied for an injunction to restrain the defendants from selling or distributing cultured milk drinks in bottles so got up as to be calculated to lead the defendants' product being confused with the plaintiffs' product or from passing off cultured milk drinks not of the plaintiffs' manufacture as and for the plaintiffs' goods. The plaintiffs also claimed damages for the alleged infringement. They further claimed exclusive right to the letters "LB" on the container.

Held: (1) in a case where a plaintiff seeks an interlocutory injunction, the court must be satisfied that the claim is not frivolous or vexatious;

(2) the plaintiffs had failed to establish that the shape of the Vitagen bottle had become by use in Singapore associated exclusively with the plaintiffs' lactic acid drink. Instead, it would appear, it was a copy of the Yakult container;

(3) the plaintiffs had also failed to prove that they have an exclusive right to use the letters "LB" on the container.